

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 893 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No.

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ANWARKHAN M PATHAN

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for the Petitioner.

MR HL JANI, AGP, for the Respondents.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 27/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 12-1-98 passed by the Police Commissioner, Ahmedabad City, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ( hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the

legality and validity of the order of detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on two cases registered against the petitioner by the DCB, Ahmedabad City. The first case is with regard to offences punishable under sections 120B of the IPC, Sections 3 and 5 of the TADA Act, Section 25(1) (a) of the Arms Act and Sections 4,5 and 6 of the Explosive Act and the second case for offences punishable under Sections 387, 506(2) and 120B of the IPC. Besides these two criminal cases, the detaining authority has also placed reliance on the statements of four witnesses for the incidents which are alleged to have taken place on 14-12-97 and 21-12-97 whose identity has not been disclosed to the detenu in exercise of the privilege conferred under section 9(2) of the Act. With regard to both the incidents, it is alleged that the petitioner and his associates had beaten the witnesses on their refusal to accede to the request of the petitioner to pay Rs.25000/- for meeting with the court expenses of criminal cases against him and on both the incidents the petitioner took away substantial amounts from the pockets of the witnesses and were beaten. On both the occasions, people gathered. However, they started running helter-skelter when the petitioner and his associates rushed towards the crowd with open knife and an atmosphere of fear and terror was created.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

Number of contentions have been raised in this petition. However, it is not necessary to refer to and deal with all those contentions as the petition is required to be allowed only on the ground that the order of release of the co-detenu on bail was not placed before the detaining authority and, therefore, vital and important document was withheld from the detaining authority which has vitiated the subjective satisfaction arrived at by the detaining authority. It is specifically alleged in the petition that the bail application of co-accused Adam Yusuf Mandali being Special Leave Petition (Criminal) No.3671/96 filed before the Hon'ble Supreme Court and the order passed thereon

on 11-2-97 were not placed before the detaining authority by the sponsoring authority. It is further contended that the said documents were demanded by making representation but the same have not been supplied to the petitioner and therefore the continued detention of the petitioner is violative of Article 22(5) of the Constitution of India.

On behalf of the respondents Mr.Jani, learned AGP has placed on record unaffirmed copy of the affidavit of the detaining authority, P.G.J. Nampoothiri, Commissioner of Police, Ahmedabad City (Retd). Time was sought for the purpose of swearing the affidavit. Having gone through the unsworn affidavit, the detaining authority has simply stated that :

"6..... I deny that the bail application and bail order of the co-accused are not placed before me before passing the order of detention against the detenu...."

In other words, copy of the bail application and copy of the bail order of the co-accused were placed before the detaining authority. If that is so, the same have not been supplied to the detenu. In view of this undisputed fact, there is no option but to hold that the detaining authority has withheld very vital and important documents and, therefore, the petitioner could not make effective representation guaranteed under Article 22(5) of the Constitution of India. Hence the continued detention of the detention is vitiated.

In the result, this petition is allowed. The order of detention dated 12-1-98 is quashed and set aside. The detenu Anwarkhan Mohmadkhan Pathan is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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